

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BENJAMIN GERALD TRICE, #364067,

Petitioner,

v.

CASE NO. 2:10-CV-12902
HONORABLE GERALD E. ROSEN

RAYMOND BOOKER,

Respondent.

**OPINION AND ORDER DISMISSING THE PETITION FOR A WRIT OF
HABEAS CORPUS AND DENYING A CERTIFICATE OF APPEALABILITY**

The Court has before it Benjamin Gerald Trice's *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner is a state prisoner currently confined at the Ryan Correctional Facility in Detroit, Michigan. Petitioner did not pay the required filing fee when he filed his petition, nor did he submit an application to proceed *in forma pauperis*. See 28 U.S.C. § 1914(a); 28 U.S.C. § 1915; Rule 3 of the Rules Governing § 2254 Cases. The Court, therefore, issued an Order to Correct Deficiency on July 30, 2010 requiring Petitioner to either pay the filing fee or submit a properly completed *in forma pauperis* application. The order provided that if Petitioner did not submit the fee or requested information within 21 days, his case would be dismissed.

The time for submitting the filing fee or required information has elapsed and Petitioner has failed to correct the deficiency. Accordingly, the Court **DISMISSES WITHOUT PREJUDICE** the petition for a writ of habeas corpus. Petitioner may submit a new habeas

petition with payment of the filing fee or an *in forma pauperis* application. The Court makes no determination as to the merits of Petitioner's claims.

Before Petitioner may appeal this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a federal court denies a habeas claim on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Reasonable jurists could not debate the correctness of the Court's procedural ruling. Accordingly, the Court **DENIES** a certificate of appealability.

IT IS SO ORDERED.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: September 8, 2010

I hereby certify that a copy of the foregoing document was served upon Benjamin Trice, #364067, Ryan Correctional Facility, 17600 Ryan Road, Detroit, MI 48212 on September 8, 2010, by ordinary mail.

s/Ruth A. Gunther
Case Manager